SENATE BILL 323 – BILL TO LIMIT THE DURATION OF COPA
HEARING AT THE HOUSE BUSINESS AND LABOR COMMITTEE
MARCH 7, 2007

EXHIBIT 1
DATE 3-7-07
SB 323

Summary of Testimony
Of John H. Goodnow, CEO, Benefis Healthcare

Why Eliminate COPA?

1. The premise (lack of competition, monopoly) for COPA is gone.
2. COPA limits the not-for-profit, community asset hospital's (Benefis Hospital) ability to compete with for-profit and out-of-state backed competition locally, as well as with competition from across our state.
3. COPA adds extra healthcare costs in Great Falls (regulatory $250,000 and could add $630,000 to bond interest costs annually – for a total of $880,000/year).
4. It is unfair to Great Falls for Benefis to continue under COPA when no other community in Montana is so regulated (including those with only one hospital).

COPA Elimination Has Very Broad Based Support

Here is a partial list of its supporters (support letters are available and you are welcome to see any you wish):

- Every not-for-profit, community hospital in Montana, including the one that serves your community, supports this Bill via the Montana Hospital Association (an Association of 61 not-for-profit Montana Hospitals. MHA is based in Helena).
- The Great Falls Chamber of Commerce
- The Great Falls Tribune
- The North Central Montana Physicians Independent Practice Association (a Great Falls IPA with 80 physicians)
- The Great Falls Orthopedic Associates (a 10 physician group in Great Falls)
- The Anesthesia Associates of Great Falls (a 14 physician group in Great Falls)
- The Northcentral Montana Healthcare Alliance (an Alliance of 14 hospitals serving north-central Montana)
- The Catholic Diocese of Great Falls/Billings
- The Blackfeet Nation
- The McLaughlin Research Institute
- CTA Group, Billings
- More individual supporters (physicians and non-physicians) than you'd care to see listed
- Further, in the public opinion poll published in the Great Falls Tribune on February 8, 2007, **77% supported** the elimination of COPA by the legislature.

Yet Opposition Is Narrow

- The Great Falls Clinic – which is Benefis direct competitor and benefits from COPA. No surprise here.

Addressing Erroneous Allegations From Our Competition

- Benefis will not institute economic credentialing, as alleged by the Great Falls Clinic, and pledges to continue to control costs (see Attachment #1).
- The elimination of COPA will not result in service cuts (again see Attachment #1 – second letter) at Benefis.
- If this is a David/Goliath situation, then it is Benefis that is the David. The Clinic's partner in the for-profit Central Montana Hospital is Essentia – a Billion + dollar, multi-state conglomerate based in Minnesota, which dwarfs Benefis. Essentia already has 14,000 employees and continues to grow. For a map of their locations see Attachment #2.
- The correct comparison is not 20 beds to 500 beds but rather 20 beds to 28 beds because that is how many surgical beds Benefis has to care for surgical cases and profitable surgical cases are the main target for the for-profit Central Montana Hospital in Great Falls.
- The elimination of COPA is not deregulation. Far from it. Not-for-profit hospitals, including all those in Montana and Benefis, are among the most regulated industries in the country. We'd be happy to provide you a three-page list of all the regulatory bodies over Benefis, if you'd care to see it. Further, Montana's COPA is one of only three left in the entire country. Per the article in Attachment #3, COPAs are "Regulatory Dinosaurs". This bill eliminates excess regulation, but it is most definitely not deregulation.
- We shouldn't be focused at looking in the rear view mirror. Rather, we need to look out the front windshield at what will happen to Benefis if we can't compete with Essentia/Great Falls Clinic.
    - Our operating margin dropped from 4.3% in 2005 to 3.8% in 2006 and will drop to 3% or less (depends partially on the outcome of this Bill) in 2007. To remain viable, a community hospital needs a 3-5% operating margin – per national experts. Benefis needs to be allowed to compete!
- The lawsuit from last year had nothing to do with COPA. Rather, it had to do with the moratorium against specialty hospitals – passed by the Montana legislature in 2005. Benefis' request for a preliminary injunction was denied by the Montana Supreme Court in a 4-3 split decision. However, the merits of the actual case were not decided, since Benefis dropped the lawsuit on November 6, 2006. On February 8, 2007 Benefis was notified that it is being sued by Essentia/The Great Falls Clinic/Harold Poulsen for legal fees. Their lawsuit against Benefis is also irrelevant to the COPA.

Why The Legislature

- COPA was created by the Legislature in 1995.
- It is the appropriate venue for addressing COPA in 2007.

Other Attachments (Attachment # 4)

- Support Articles From The Great Falls Tribune
  - August 6, 2006
  - October 22, 2006
  - February 12, 2007
- Public opinion poll results published in the Tribune on February 8, 2007.

Please support this Bill and release Benefis from the now unnecessary and, at this point, detrimental COPA. Allow Benefis to compete against both local and statewide competition without the extra cost and extra regulation of a past its time COPA that hampers Benefis' ability to compete.

We will be happy to provide you factual data on anything else you desire to know from us.

Thank you.

Attachments:
#1 – Benefis' Commitment Letters (2)
#2 – Essentia Healthcare Map
#3 – COPA – Regulatory Dinosaurs – article
#4 – Tribune Support Articles and Public Opinion Poll Results

ATTACHMENT #1

Benefis
HEALTHCARE

January 25, 2007

Dear Senators and Representatives,

As you know, legislation has been introduced (SB 323, Senator Jesse Laslovich, D-Anaconda and Representative Rick Ripley, R-Wolf Creek) which will grant Benefis Healthcare (Benefis) legislative relief from the Certificate of Public Advantage (COPA) under which it has been operating for over 10 years. The importance of this bill to the healthcare safety net Benefis provides Great Falls and surrounding communities cannot be overstated.

Over the past several weeks, Benefis has become aware of two erroneous arguments raised in opposition to the legislation: (1) elimination of the COPA will allow Benefis to engage in "economic credentialing"; and (2) without the COPA, Benefis will substantially increase its charges. We, representing the Benefis Healthcare Board of Directors, will address each of these concerns in turn.

Benefis has never engaged in "economic credentialing" against physicians who compete against it (or put another way, removed any physician who competes with Benefis from the Medical Staff). Any statements or allegations to the contrary are simply not true, and Benefis has no plans of doing so in the future.

Make no mistake, Benefis' locally comprised citizen board is extremely sensitive to healthcare costs in Great Falls. Benefis prices have been very competitive since the merger, and we exist, in part, to ensure healthcare costs will continue to be affordable in this community. To that end, our Board and management team have set a goal to keep the prices of Benefis Healthcare within the lower half of Montana hospitals with similar scope and levels of service in this state. We are the only hospital board in the entire State of Montana, of which we are aware, to make such a commitment to our community and region.

Benefis accepts the newest competition in town (namely the recent acquisition of the Central Montana Hospital by a partnership of Great Falls Clinic and Essentia Healthcare, a large out-of-state corporation) is here to stay. Due to this new competition, Benefis will likely lose its sole community provider status, resulting in a direct loss of Medicare funds in excess of $1.5 million annually. We will compete, but the COPA must be eliminated to make the playing field less slanted in favor of the new for-profit, physician-owned hospital.

Benefis is a not-for-profit, mission-driven provider. As such, Benefis is the only hospital in this city that has a 24/7 emergency room and takes every patient in need without regard for his or her ability to pay. It is encumbent upon us to do everything in our power to ensure the continued viability of this crucial community asset. In this new competitive environment, relief from the COPA, which is having a growing adverse affect on Benefis, is absolutely critical.

Sincerely,

Chris Ebeling
Chair

Mary Sheehy Moe
Vice Chair

John H. Goodnow
CEO

Benefis
HEALTHCARE

January 29, 2007

Sen. Trudi Schmidt
4029 6th Avenue South
Great Falls, MT 59405

Dear Trudi:

We've heard that you are concerned that Benefis will reduce services post COPA. Although it may just be a rumor, we want to make sure such concerns are addressed.

First, in the 10+ years since the merger **numerous** (we'll be happy to provide you the extensive list if you'd like it) services/programs have been added and none eliminated. The many services/programs added had nothing to do with the COPA and the reason none were eliminated also was not due to any COPA prohibitions.

The many additions (and no eliminations) were because of Benefis' mission "We who are Benefis Healthcare are dedicated to our Christian tradition as a healing ministry to provide excellent physical, emotional, and spiritual care to all in need", and because we are a not-for-profit community asset governed by a dedicated volunteer board of directors who take the mission and our role as a community asset very seriously.

To think services would be eliminated post COPA misunderstands Benefis' commitment to its mission and the dedication and commitment of its local, volunteer Board. Rest assured that regardless of who suggested that notion, those false fears of eliminated services would not materialize if COPA is eliminated.

The legitimate fear is if Benefis continues to be overly regulated by a now unnecessary COPA (which impedes Benefis' ability to compete with for-profit, physician directed competition) what it will do to Benefis financial condition and its ability to meet its mission. **Keeping COPA in place harms Benefis' ability to compete, raises Benefis' costs, and threatens Benefis' ability to continue to offer a full and complete range of services and programs.**

We hope this addresses any concern you may have. We, of course, are available to meet with you for further discussion should you desire.

Sincerely,

John H. Goodnow, CEO
Benefis Healthcare System

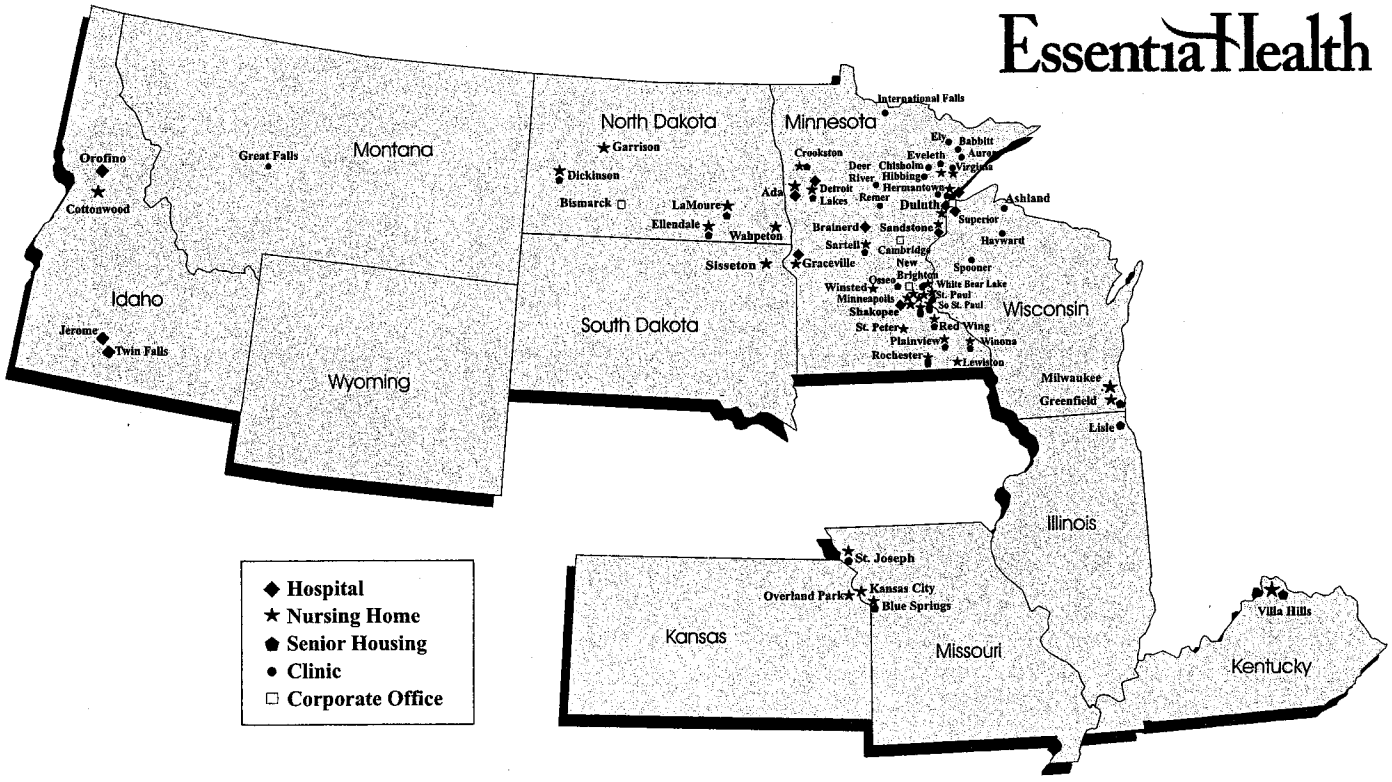
JHG:ycb

Cc: Other members of the Great Falls and Cascade County Legislative Delegation
Other members of the Benefis Healthcare System Board of Directors
Amy Astin, Director of Advocacy

ATTACHMENT #2

PeRspective

THE AFFILIATES OF ESSENTIA HEALTH



ATTACHMENT #3

Special Report » *Mark Taylor*

COPAing with antitrust rules

Just three systems have used certificates of public advantage seeking antitrust immunity. Experts now say they're regulatory dinosaurs

'The COPA has required additional state regulation and oversight, but that's required us to work more diligently to manage our costs and maintain prices at a reasonable level.'

—Joseph Damore, president and chief executive officer, Mission Hospitals, Asheville, N.C.

Robert Burgin remembers when he first became interested in a little-known law creating the certificate of public advantage—commonly known as a COPA—which offers merging hospitals a means of avoiding antitrust challenges from aggressive federal regulators in exchange for state supervision.

In August 1994, the former president and chief executive officer of Asheville, N.C.-based Memorial Mission Hospital received a 44-page fax from the U.S. Justice Department's Antitrust Division demanding thousands of pages of documents about a proposed joint venture with smaller city rival and eventual merger partner, St. Joseph's Hospital.

"Our fax machine began humming with the Justice Department's civil investigative demand letter, and that froze everything in place. Talk about something that will tighten your sphincter!" Burgin says with a chuckle. "We responded to everything they asked for, hired a team of lawyers and assistants and rented two extra copy machines to pack a panel truck with thousands of documents to ship to Washington."

He says that in 1995 the Justice Department required 16 executives from the two hospitals to be deposed in Washington by government lawyers. "At our expense, of course," he recalls. "And we spent two full days answering questions they pulled from our file documents."

At the same time executives from both hospitals met with state legislators to explain why they sought the joint venture and why it was necessary to expand an existing state COPA law, which conferred what is called a state action immunity on the merger, a court-recognized exemption from federal antitrust oversight. The law passed and in 1995, Mission Hospitals became the first health system in the country to use a COPA to protect a state-blessed monopoly. Generally state COPA laws try to protect consumers from potentially anticompetitive behavior of the merging partners by returning to the communities some of the savings they received from joining.

As a spate of mergers began transforming the hospital industry in the early 1990s, at least 19 states passed laws allowing merging hospitals to escape federal antitrust scrutiny if they submitted to state supervision. More than 200 hospitals announced mergers in 1995, up from about 50 only five years earlier. COPA laws were then viewed as a remedy for costly investigations and even riskier merger challenges from the two increasingly aggressive federal antitrust agencies: the Federal Trade Commission and the Justice Department's Antitrust Division. In fact, an exclusive *Modern Healthcare* Web poll found that more than two-thirds of respondents say federal and state antitrust enforcement has hindered business decisions at their healthcare organizations (See results, p. 32).

However, 10 years after that first COPA was awarded, only two other merging health systems have pursued the arrangement and continue to operate under state oversight: Two-hospital Benefis Healthcare in Great Falls, Mont., and three-hospital Palmetto Health Alliance in Columbia, S.C. Those organizations, along with Mission, are required to file annual reports with state agencies and submit to government scrutiny of their finances and compliance with their agreements. Benefis and Mission are the only nonfederal acute-care hospitals in their respective cities, while 1,005-bed Palmetto faces competition from the Sisters of Charity Providence Hospitals in South Carolina's state capital.

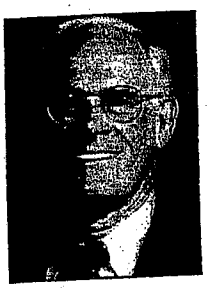
Why haven't more hospitals sought COPAs, and how did they turn into something of a fad—what one healthcare lawyer dubbed the pet rocks of the 1990s? What happened to the three systems that did receive them? And are COPAs ever likely to be revived?

Facing extinction?

Healthcare lawyers and policy experts generally dismiss COPAs as failed models, regulatory dinosaurs from a bygone era unlikely to be resurrected in the current

antitrust enforcement environment. And while the health system executives living under them say they probably wouldn't seek them again in today's changed climate because they seem like an unnecessary risk, most say they have few regrets.

After rocky starts, a few financial potholes and requested modifications of the agreements, all of the COPA-backed mergers are profitable today.



Burgin: Regulatory climate has changed since COPA was signed.

Michael Bissegger, a former FTC lawyer now with the Washington office of Epstein, Becker & Green, who worked on the Columbia COPA, says a second request for Hart-Scott-Rodino Act filing information from the federal antitrust regulators can be a costly and stressful headache, averaging from $750,000 to $1.5 million per request. The Hart-Scott-Rodino Act requires parties in large transactions to file pre-merger notification reports with federal antitrust agencies and wait a prescribed time before closing the deal.

Bissegger says that while COPAs offer a defense against a potential federal antitrust challenge, they don't offer immunity from investigation or prosecution. He says merging hospitals must still file under Hart-Scott-Rodino because it's a regulatory requirement, but the federal government is unlikely to challenge a merger blessed by a COPA.

At first hospitals thought that the COPA statutes offered protection against federal challenges with minimal state oversight. But then a 1992 U.S. Supreme Court decision set a legal precedent requiring strong and ongoing state supervision of the programs. "The hospitals quickly realized this was not a way to achieve their merging goals," says James Blumstein, a professor at Vanderbilt University Law School who has studied COPAs. "Particularly if the price was losing their autonomy. That case made the price of COPAs more unattractive and less of a magic bullet. As long as a COPA appeared to be a sham, it was something to look at. But once it had some teeth, it became more unappealing."

The three COPA agreements occurred after the Supreme Court case, though some other state COPA statutes preceded that ruling.

In hindsight, COPAs may seem like a bad idea to healthcare lawyers, policy experts and even some hospital executives. But the three systems that signed them continue to abide by their terms nearly a decade later.

Despite the challenges of having the government looking over their shoulders, some of those hospital executives actually praised their COPA agreements, saying individually that the hospitals would have been unable to afford to pay for the community health programs, technology purchases and new services the mergers allowed them to achieve. While they complained about some of the onerous constraints the agreements impose on their finances, they say the COPAs imposed discipline that has served their organizations and communities well. But their decisions were based on healthcare antitrust enforcement conditions of a decade ago. They say they'd have to seriously reconsider signing a COPA today as federal regulators have been less aggressive.

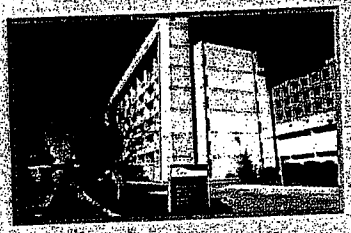
There was generally little local opposition to the COPAs. Two of the three Blues plans in the markets where the COPAs were used—the largest payers in those markets—declined comment, and local employers seemed to support the mergers as a way to prevent hospital arms races that could ultimately raise their costs.

Asheville, N.C.

Joseph Damore, current president and CEO of 721-bed Mission, says the merger was right for the Asheville community and has served the hospitals well. Damore, who inherited the COPA when he replaced retiring CEO Burgin in December 2004, says the community benefits far outweighed the costs of eliminating competition. Mission serves Asheville, a city of 70,000 in far western North Carolina and a market of 225,000 residents of surrounding counties.

"The community has received millions of dollars in healthcare benefits and our costs are significantly lower than similar-size hospitals in our state," he says. "We are probably the

HOW THE COPAs COMPARE



	Benefis Healthcare, Great Falls, Mont.	Mission Hospitals, Asheville, N.C.	Palmetto Health Alliance, Columbia, S.C.
System			
Projected savings	$109.2 million over 10 years; reduced to $69.7 million	$74.2 million over five years	$71 million over five years
Achieved savings	Yes; amount unavailable	$88 million over five years	Yes; amount unavailable
Other terms	Revenue cap; limit profit margin to 6%	Benchmark prices to comparable hospitals in state	Five-year price freeze
Charity care	No less than 1996 levels	Commit to maintaining higher charity-care levels	Means testing to qualify for free care

Sources: Company reports, Modern Healthcare *research*

most regulated hospital in North Carolina and maybe even in the country. The COPA has required additional state regulation and oversight, but that's required us to work more diligently to manage our costs and maintain prices at a reasonable level."

Damore says Mission achieved $88 million in savings in the first five years of operation, exceeding the COPA expectation by more than 14%, and has recorded more than $100 million in savings since the COPA was announced. The monopoly has been profitable almost since its inception. In 1999, the year after it formally merged with St. Joseph's, it earned $22.6 million on revenue of $384 million. Last year, Mission earned an operating profit of $24.7 million on revenue of $565 million, a 4.3% margin. The system posted net income of $25.9 million that year.

Burgin, who negotiated the COPA and the 1998 purchase of St. Joseph's for $75 million, says there is support for and comfort with the agreement and the state regulators monitoring it.

He says the state negotiated the number of doctors serving on the hospitals' board and insisted on limited insider representation on the board. "There were some tense moments the first few years, particularly with the doctors. They were pretty anxious. They've always been able to play us off against each other and now they can't. They thought we'd take advantage. We never did, but that fear was there."

Burgin says the aggressive enforcement by the federal antitrust agencies during the wave of hospital merger mania in the '90s made the COPA protection more desirable. But he says the environment began to change after the 1994 elections that led to big Republican gains in Congress. "Would I do it over again? After the 1994 elections the House and Senate became more entrepreneurial and tolerant of mergers. But it was a different time when we were getting started and we felt fortunate to secure this COPA," he says.

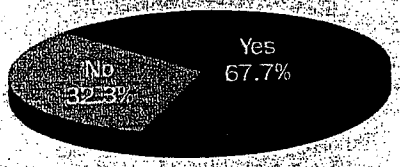
Columbia, S.C.

Kester Freeman Jr., who joined Richland Memorial Hospital in 1983 as executive vice president and was named president and CEO of the public hospital nine years later, says at the time Richland was considering a merger with crosstown rival, two-hospital Baptist Healthcare System, there was a climate of anticipated aggressive managed care in the market, coupled with the intrusion of for-profit Columbia/HCA. Freeman, who was elected CEO of the merged 1,084-bed Palmetto Health in 1998, says the system was formed from an initial conversation about the hospitals' commitment to community-based, not-for-profit healthcare.

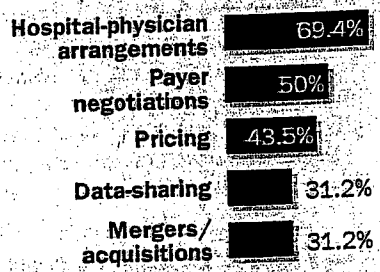
ANTITRUST DISGUST

More than two-thirds of the respondents to *Modern Healthcare*'s exclusive Web survey on antitrust issues say regulatory oversight efforts have restricted the business decision-making at their healthcare organizations—most notably in hospital-physician relations.

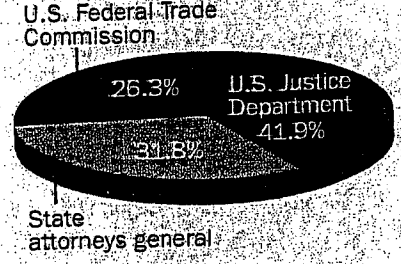
Have state/federal antitrust enforcement activities inhibited business decisions at your healthcare organization?



Which of the following business activities at your healthcare organization do you believe are most affected by antitrust concerns (Choose all that apply)



Which oversight agency do you believe is the most aggressive in enforcing antitrust statutes?



Note: The nonscientific survey was conducted Jan. 10 to Feb. 11 via modernhealthcare.com, with 186 readers completing the survey.
Source: Modern Healthcare MH/Adam Dol

He says raising prices didn't motivate the merging hospitals. The two or three years before the merger were the most profitable in the respective hospitals' histories, he adds.

In hindsight, Freeman says Palmetto Health may not have needed the COPA. "From a personal perspective I have no regrets. We were not intimidated by the obligations of our COPA, though we thought it would shelter us from federal interest. We didn't plan the merger to beat up competitors and payers but to better serve the community." Palmetto Health controlled 67% of the acute-bed hospital market at the time of the merger.

Freeman says employers and payers were generally quiet about the merger and the May 1997 COPA, but three local residents sued Palmetto Health two months later, alleging in a case that went to the state's Supreme Court that county residents would not benefit from the merger involving its only public hospital. The court's ruling affirmed both the COPA law and a public hospital's right to lease itself to a tax-exempt organization.

He says the COPA has allowed Palmetto Health "to absolutely look at anybody in this community to say we've lived up to our obligation and met every COPA commitment, come hell or high water. That's why we did this: We didn't want to be viewed as an investor-owned, bottom-line driven organization that doesn't care about commitments to the community. Even though it's been a financial burden to us, I'm pretty proud of meeting those 25 obligations."

Palmetto Health earned an operating profit and net income of $25 million on total net revenue of $880 million for fiscal 2004 ended Sept. 30, an operating margin of 3%, company CFO Paul Duane says. He says total revenue was lower than in 2003, but net income and operating profits were around $27 million that year. Palmetto's hospitals were profitable before the 1998 merger, nearing $8 million in net income on total revenue of $403 million, but in 1999 it lost $23 million on total revenue of $645.3 million.

Leon Frishman, deputy commissioner of the South Carolina Department of Health and Environmental Control, says there wasn't a fear that Palmetto Health would exploit its market power to gouge customers. "There were substantial benefits to the community and some conditions they had to follow," he says. "And they did all those things."

Great Falls, Mont.

Benefis formed in 1996 with the merger of 339-bed Montana Deaconess Medical Center and 145-bed Columbus Hospital after a 20-month battle with state and federal regulators.

Wayne Dunn, Benefis' vice president of finance and chief financial officer, says the two hospitals had never previously discussed a merger before the COPA agreement. "We hit it the first time out," says Dunn, who joined Deaconess as CFO in 1981 and was named Benefis CFO in 1996 when the hospitals merged.

Dunn says 490-bed Benefis didn't want to

Continued on p. 34

COPA >> from p. 32

incur the time, effort and costs associated with a federal merger challenge. He says state hospital associations around the country developed the COPA model with state legislatures as a way to pre-empt federal merger challenges for hospitals that wanted that option.

Dunn has mixed feelings over the value of his system's COPA.

"And we had bonds outstanding and needed to give assurance to the bond people. But with the FTC hovering like that, we couldn't give any assurances," he says. "So we thought the best approach would be to go to our attorney general and discuss COPA, rather than merging and having to go through the agony of undoing it."

Even a monopoly offers no guarantee of a profit. In 1997, the first full year of its merger, Benefis logged an operating profit of $7 million on revenue of $140 million, but saw those gains erode as it projected a combined $9 million loss in 1998 and 1999 because of what it called constrictive pricing and revenue caps. However with requested modifications Benefis was able to post a $3.9 million operating profit in 1998 on total revenue of $158 million and a $1.6 million operating profit in 1999 on revenue of $160 million.

Dunn says the COPA forbade Benefis from cutting services without state permission, required the organization to merge medical staffs and put a ceiling on revenue to prevent the system from "exploiting our monopolistic position." The revenue cap was achieved by a formula determined by patient volume and case-mix index and allowed an annual inflation increase.

But would Benefis do it again? "I am more convinced today than even when we first did it that the merger was a good thing, the correct thing to do," Dunn says. "About the COPA I have mixed feelings. It allowed us to get the merger accomplished. But it really takes a lot of time and energy and some costs. I would do it again if it was the only way to achieve the merger."

Like Palmetto Health, Benefis sought modifications in the COPA when the conditions the agreement imposed threatened the hospital's financial health.

In 1996, Benefis hospitals provided $27.1 million in charity care, which has increased to $79.7 million in 2004. Dunn says Benefis' unaudited financial statement for calendar 2004 shows a steep increase in revenue and profits over 2003. Total revenue grew about 12% to $269.7 million from $241.1 million in 2003 while operating income grew 49% to $9.8 million in 2004 from $6.6 million in 2003, for an operating margin of 5.3% in 2004.

Montana Assistant Attorney General Kelly O'Sullivan, who inherited the task of monitoring the COPA in 2001 five years after it was signed, says: "You have to balance the needs of Montana consumers of healthcare without driving the hospitals out of business." While she says the process has been contentious sometimes, "My sense is that our financial regulation has been very successful for consumers and patients in Great Falls." <<

What do you think?

Write us with your comments. Via e-mail, it's mhletters@crain.com; by fax, 312-280-3183.

ARNOLD & PORTER LLP

We are pleased to announce that

Dara Corrigan

has joined the firm as co-head of our US Pharmaceutical and Medical Devices practice group. She is resident in our Washington, DC office.

Dara_Corrigan@aporter.com
202.942.5508

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ATTACHMENT #4

The Buzz

You can make online comments —about opinions, Today's question from Page 1M, sports and news issues — all on *The Buzz*, the Great Falls Tribune's online Forums. Check them out at: http://GreatFallsTribune.com/forums

OPINION

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Health care has changed; COPA should sunset

A decade is a long time.

The past 10 years have seen explosive growth in the Internet and computer use, hybrid cars, wind energy, high-definition TV, satellite radio, and, in parts of Montana, population.

Nowhere has the pace of growth and change been greater than in health care — in technology and in the evolution of the system itself.

It was 10 years ago that Great Falls' two long-time hospitals merged, resulting in Benefis Healthcare and a state document that sought to protect consumers from monopolistic exploitation — the "Certificate of Public Advantage," or COPA.

By just about any measure, the merger has been a success, including both quality and cost of care.

To what extent the COPA played a role in that success is unknowable, but at the very least the regulatory process accompanying the COPA served as a consumer safety net that helped Benefis gain public acceptance.

After 10 years, however, northcentral Montana's community hospital finds itself tangled in that safety net, burdened with reports that hardly anybody reads and encumbered by processes that divert resources from the hospital's primary mission.

Despite the merger of the area's two major hospitals, Benefis today faces stiff competition, not only from next door but also from around the region.

The COPA has served its purpose and should be allowed to sunset.

Many reasons could be listed, but three rise above the rest in our minds:

- As noted above, the merger succeeded. Benefis is working to meet the community's needs in an already heavily regulated health-care environment. The hospital is guided by a strong public-interest mission statement and an unpaid board of directors from a wide cross-section of the community.
- The COPA today comes with costs, in real time and expense *and* in opportunities lost to the sometimes-cumbersome process. It's important to note that those expenses are borne by Benefis and, therefore, the community — not by the state.
- It's a matter of fairness. As Dr. Paul Dolan, a board member, points out, it is "unfair that Benefis becomes the only regulated major hospital in the state. If it's good for us, it ought to be good for everybody else."

Below, we'll look a little more closely at those three reasons.

OUR OPINION

Success of the merger

The combination of Columbus Hospital and the Deaconess Medical Center has resulted in Montana's largest — and lowest-cost — medical operation.

A recent cost survey indicated that overall cost of services at Benefis was 18 percent lower than at similar facilities elsewhere in Montana.

At the same time, quality has shown significant improvement.

In just the past couple of months, Modern Healthcare magazine published industry analyst Solucient's list of 100 most improved hospitals, and Benefis was on the list — the only Montana hospital to make it.

In February, a nationwide study by HealthGrades put Benefis in the top five percent of hospitals nationally, including the 2006 Distinguished Hospital Award for Clinical Excellence.

Taken together with the hospital's cost of services, you get a picture of a good health-care deal for northcentral Montanans — and for any others who'd care to come here.

COPA's costs

The COPA is a drain on the hospital's resources.

The reporting and auditing responsibilities it imposes in the course of regulation are increasingly unnecessary and in many cases redundant.

The hospital's users bear not only the direct costs of this regulation, but also the consequences of hospital resources allocated for things not directly related to patient care.

Dissolution of the COPA would not leave Benefis unregulated — far from it.

In addition to oversight by major organizations such as the Joint Commission on Hospital Accreditation (from which Benefis got rave reviews this year) and the Centers for Medicare and Medicaid Services, Benefis and just about every aspect of its operation are subject to review by agencies and organizations related to those operations.

This includes medical specialty standards to labor laws, the IRS (for tax-exempt status) to the DEA (for handling and distribution of controlled substances in the pharmacy).

Fairness

This point can't be stressed enough, and may be the most relevant to the question of whether to sunset the COPA.

The question is cast in many people's minds as a matter of competition between the hospital and the Great Falls Clinic.

To see how the competitive environment has changed since 1996, look no further than the clinic's new specialty building, including Clinic Cancer Care, and the clinic's joint venture with Minnesota-based Essentia Health in what's now called Central Montana Hospital.

But beyond that, Benefis *and* the clinic face increasingly aggressive competition from health-care operations from other cities — whether it's cardiologists from Missoula and Kalispell or other diagnosticians from Billings.

These other major operations, looking for growth opportunities and assisted by technological advances, are pressing into the traditional Benefis service area.

Benefis Healthcare is a major economic force in northcentral Montana, but more important, it's our community hospital. As Benefis goes, so goes our community.

The public's interest lies in a strong Benefis that is able to move quickly to meet competitive challenges.

It can best do so without the COPA.

For comments, tips or corrections

Call Managing Editor Gary Moseman, 406-791-1465 or 800-438-6600, or e-mail the editorial board at tribletters@greatfallstribune.com

OPINION

Editorial board

Jim Strauss, President & Publisher
Elaine Kulhanek, Executive Editor
Gary Moseman, Managing Editor
Mike Grale, Production Director

Sun should have set on COPA after job well done

OUR OPINION

The attorney general's office did no favor for health-care consumers — i.e. almost everyone — in northcentral Montana when it decided to continue regulating Benefis Healthcare.

In an opinion issued Monday, Attorney General Mike McGrath said he saw insufficient evidence that competition had increased enough to justify ending the regulatory regime called a Certificate of Public Advantage, or COPA.

As a result, the COPA, with its expenses and its red tape, continues.

It's not that the COPA has been a bad thing. To the contrary.

It was imposed a decade ago as a major condition of allowing the merger of Great Falls' two hospitals, Deaconess Medical Center and Columbus, into a single community-based facility.

The idea was that regulation would protect consumers from exploitation by the newly sanctioned monopoly.

Whether because of the COPA or because of efficiencies born of the merger — or both — the merger had the desired effect: The quality of care increased and costs here are the lowest in the state, and by a substantial margin.

The odd thing about McGrath's opinion is that it appears to have it both ways.

He acknowledges that there have been "significant increases in competition for certain health care services provided by Benefis."

Foremost among the competitors are the Great Falls Clinic's ambulatory surgery center and Clinic Cancer Care, along with the recent purchase by the Clinic and an out-of-state health-care corporation of the Central Montana Surgical Hospital.

Yet McGrath denies the request to get out from under the COPA, saying it "has not prevented Benefis from successfully responding to increased competition in the past."

He cited the hospital's solid financial position, as well as its capital and technological improvements over the past nine years.

The problem is that things are changing fast right now, and attending to the COPA itself is not without substantial cost to our community-managed hospital.

Ironically, McGrath cited statistics from statewide insurer Blue Cross Blue Shield — a business partner of the hospital's chief competitor — about the hospital's prices, which are consistently lower than the three other large hospitals in the state, none of which is regulated by a COPA.

We'd make four points about that:

1. Lower prices here serve area consumers well, and no one denies that;
2. But it's a big part of a situation that has made Benefis ripe for cherry-picking by new competition;
3. It says nothing about increased competition statewide and regionally, especially when you take new developments in technology and telemedicine into account; and
4. In the alternative, if the COPA is so accountable for a favorable outcome here in Great Falls, maybe COPAs should be extended to other health-care facilities in the state.

In any event, a bright side to the attorney general's decision is that it leaves room for monitoring developments and revisiting the ruling.

"Such action may be necessary in the future, due to the rapidly changing healthcare services market in Great Falls," McGrath said.

Presumably the hospital itself will keep the issue before the regulators.

In the meantime, we can thank Benefis and the COPA for accomplishing much of what they set out to do a decade ago.

So far this year ...

Our opinions	46	Editorial cartoons	57
Montana guest opinions	14	Reader letters	161
National guest opinions	43	Current letter backlog	13
Syndicated columnists	27	Registered to chat	1,915
Counterpoints	12	Story chats posted	3,003

OPINION

Editorial board

Jim Strauss, President & Publisher
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Karen Ogden, Enterprise Editor
Mike Grafe, Production Director

Compromise on Benefis COPA makes sense

OUR OPINION

It's hard to blame Benefis Healthcare for wanting out from under state regulation.

After all, the state "certificate of public advantage" process adds about $800,000 a year to the hospital's administrative costs, it slows the hospital's response to competitive pressures, and to some extent it disconnects hospital rates from the costs of service.

But today, more than 10 years after the merger of Deaconess Medical Center and Columbus Hospital, competitive pressures have increased to the point that the COPA's very *raison d'être* — protecting northcentral Montana health-care consumers from the hospital's monopoly power — no longer exists.

That pressure comes not only from the Great Falls Clinic, but also from health-care providers outside northcentral Montana.

Benefis has asked Attorney General Mike McGrath to reconsider his decision last October to continue his office's regulation of the hospital under the COPA, and he should do so.

Now a bill forcing the issue has advanced in the state Legislature.

Benefis is the only hospital in Montana and one of only three in the nation to be subjected to state regulation.

No one argues that the COPA hasn't been effective — Benefis service levels and rates are among the best in the region.

The argument — correct in our opinion — is that after a decade in effect, the COPA has outlived its usefulness.

That argument and many others were made in a three-and-a-half-hour hearing last week before the state Senate Judiciary Committee.

The panel was considering an Anaconda lawmaker's bill to lift the COPA. On Friday, the committee passed an amended version of the bill on a 9-3 vote.

The amendments make sense, and they should make the legislation a no-brainer.

Under language added in committee, the bill would require that Benefis report annually to McGrath's office for the next two years regarding the quality of and access to health care; patient safety; patient satisfaction; health-care service changes, additions, and deletions; and "cost comparisons based on similarly situated health-care facilities."

In other words, the bill lifts the COPA but extends a measure of oversight for a couple of years to gauge how the action affects the cost and quality of Great Falls health care.

It's a reasonable compromise; the bill should pass.

The Buzz

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Yes 771-9824 No 771-9825

Note: Other Tribune phone numbers will not record your vote.

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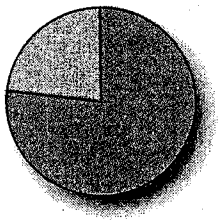
Yesterday's question

Do you think the Legislature should end state oversight of Benefis?



Yes 77% **No** 23%
Total votes cast: 1,013
Results are not scientific

Reader Comments

Responses selected from recorded messages and The Buzz online forum at www.greatfallstribune.com/forums

"

Yes, the COPA has served its purpose. It's time to put it to bed.
— Dean M., Great Falls

Yes, this has gone on long enough. The hospital deserves having this lifted.
— J.

No, I think there still needs to be some oversight and also, maybe, some maturing in all parties involved.
— Pat, Great Falls

No, we don't need anymore unregulated monopolies in Montana.
— L.W., Great Falls